

During its regular session of May 1, 2000, at 10:45 a.m., upon a motion by **Commissioner Beatty**, and unanimously carried, the Board in accordance with NCGS 143.318.10 agreed to enter into closed session to consult with the Attorney.

Present in the Executive Chambers were Chair Robert E. Hibbitts, Vice-Chair Marie H. Huffman, and Commissioners Katherine W. Barnes, Barbara G. Beatty, and W. Steve Ikerd. Also, present were Staff Attorney Debra Nass Bechtel, County Attorney Robert Oren Eades, County Manager J. Thomas Lundy, Assistant County Manager Steven D. Wyatt, County Clerk Virginia W. Sobotkin, Director of Utilities and Engineering Barry B. Edwards, and Utilities and Engineering Public Services Administrator Kevin N. McCracken.

**PROPOSED ADDENDUM TO “FEBRUARY 5, 1996, AGREEMENT BETWEEN CATAWBA COUNTY AND NEWTON FOR REVENUE SHARING ON THE BALLS CREEK ELEMENTARY AND BANDYS HIGH SCHOOL PROJECT, AND 1998 ADDENDUM TO SERVE SHERRILLS FORD ELEMENTARY SCHOOL**

Background: See Minutes of regular sessions of February 5, 1996, and September 21, 1998, and closed session of February 21, 2000. At the February 21 meeting, the Board was apprised of a disagreement between the County and City of Newton regarding the February 5, 1996, contract entitled, “Agreement between Catawba County and Newton for revenue sharing on the Balls Creek Elementary and Bandys High School project,” and the September 21, 1998, addendum to that contract to serve Sherrills Ford Elementary School.

On February 5, 1996, Catawba County entered into the contract with the City of Newton to provide water service to Balls Creek and Bandys High School through a revenue-sharing contract. Under this agreement Catawba County agreed to construct the lines, and Newton agreed to maintain the lines. On September 21, 1998, the contract was amended to further extend this water line to Sherrills Ford Elementary School. To achieve this the County installed a pump station at the closed Newton Landfill, a 500,000- gallon elevated water tank at Bandys High School, and approximately 37,500 linear feet of 12-inch waterline.

Requests for extensions from this line had been received from Island Point Road to North View Harbor, on Beatty Road to Anchors Landing, on Molly’s Backbone Road to White Dove Development, and Murray’s Mill Estate on Sherrills Ford Road.<sup>1</sup>

Newton had stated it could not afford to maintain the lines to serve the residential developments and was concerned with the potential growth in this region. The City’s opinion was these extensions were not covered under the 1996 contract and its addendum; it wanted separate contracts for any other extensions off this waterline. The County’s position was such extensions were clearly understood by both parties in the 1996 contract. In addition, the County’s responsibility was to provide safe drinking water and adequate flows for fire suppression.

Paragraph 2 of Section I, of the February 6, 1996, contract stated:

2. *The County shall have the right, as its option, to participate in future line additions, extensions, or connections from any revenue sharing line(s) installed and operated as a part of the Project (“the line”), provided any such addition, extension, or connection will serve County customers and no customers inside the City’s corporate limits. If such addition, extension, or connection is within the City’s corporate limits, the City shall have the right to add to, connect to, or extend the line to its*

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<sup>1</sup>At the September 20, 1999, meeting, the Board agreed to allow three Sherrills Ford/Terrell area developers to share in the cost of waterlines in this area. The three developers were Crescent Timber, with 382 lots, White Developing, with 61 lots, and BO of North Carolina/Diamond Point Estates, with 81 lots. Each had offered to share 50% of the cost of waterline design and installation outside of their developments, from Sherrills Ford Road to each development.

*citizens with no participation from the County.*

The City voiced disagreement with the following:

**Section I, February 5, 1996, contract**

*The County and City agree that the Revenue Sharing Chapter 504, Sections 504.10 to 504.15 of the Catawba County Code (Chapter 504) shall be and is incorporated by reference into this Agreement.*

Subsection 504.15 pertained to rates for inside and outside customers. The City wanted to adjust its water rates to avoid losing any money, and wanted a different set of outside rates.

**Subsection V, September 21, 1998, Addendum**

*"In the event County receives a competitive offer from an alternative water source which would provide County with improved water quality, quantity pressure, flow rate or price, City will be given written notice of said offer. If within ninety (90) days of receiving such notice City is able to match or improve upon said offer, City will be allowed to continue as the water provider."*

The City felt with this subsection Hickory, for example, might offer a lower cost and the City of Newton would lose the line if it could not match or improve the offer. In addition, the County had not included this subsection in revenue sharing contracts with other cities. The City wanted to be the sole provider without competition.

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The County Attorney and the City Attorney had been working on "Addendum II," which was intended to clarify the February 5, 1996, and September 21, 1998, contract and addendum. With Addendum II, the Attorneys were attempting to have a document that would cover any future extensions from this line, thus eliminating the need for future contracts.

**The County Attorney** presented the most recent offer from the City of Newton. He stated he was attempting to create the Addendum II with specific requirements in each provision, and in general there had been some progress in the negotiations. There was one prominent concern to the City of Newton--rates to outside customers. The County Attorney informed the Board the City Attorney, Larry W. Pitts, had removed the 1.99 rate limitation and replaced it with the following proposed Subsection 9.<sup>2</sup>

9. *The City will charge all customers within the Service Area rates which are consistent with the rates charged all other non-city customers ("outside rates"), That is, a given customer within the Service Area will be charged a rate consistent with the rate that same customer would receive if located in any other area to which the City provides water service, but which is outside the City's corporate limits.*

*The City retains the right, at its sole option to change its Schedule of Rates. At the time of the execution of this Addendum II, the rate schedule is identical for all non-city customers and it is anticipated that, although the rate may change from time to time, the rate will remain identical for all non-city customers. However, if in the future a "cost of service" or similar schedule is required which dictates a different rate for different customers (by way of example based on the distance from the water plant, type of service required, or level of service) the rate will be identical for all non-city customers similarly situated whether within or without the Service Area.*

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<sup>2</sup> The 1.99 rate as it applied to the cost of water meant that water would cost a County customer no more than 1.99 times what a City customer paid. For example: if a City customer paid \$12.00 per month, the County customer would pay \$23.88 per month, which would represent a 1.99 rate differential between the City customer and County customer.

*City further agrees that its "outside rates" will be consistent with the outside rates of other municipalities in the surrounding area, such as Hickory, Morganton, Lenoir, Statesville, Mooresville, Lincolnton and Lincoln County.*

**The County Attorney** stated he would be satisfied with the present draft addendum if this 1.99 rate was agreed to by the City and reinserted into the addendum, and other changes, for example, pertaining to County approval of new or additional construction, were retained or clarified.

The Commissioners and staff then discussed the concerns of both parties. Newton maintained the unusually long waterline to Sherrills Ford and the high growth in that area could cause increased failures and require such improvements as pumping stations to insure adequate water pressure. The Assistant County Manager stated this should not be a concern to the City since the County would be paying for such occurrences and capital construction.

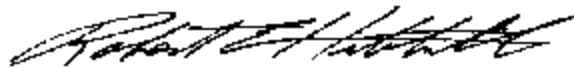
The staff also apprised the Board of conversations with Crescent Developers, who stated they would be drilling wells for the Island Point Development if this matter was not resolved within days. This was a critical issue, since water customers were needed to support the line, and without them it would hinder municipal sewer in this area. A discussion followed regarding bulk water purchases from Newton, the County operating its own water system--meter readers, installing taps, etc.

Following this discussion the County Attorney outlined the various legal consequences to the courses of action discussed. The Staff was asked to look at all options and the legal consequences and to report back.

In summary, the Commissioners stated they would execute the addendum if the 1.99 rate was reinserted, and this would be the County's final offer. **Chair Hibbitts** stated he would talk to the Mayor and the City Attorney, and he advised the other Commissioners to talk with members of the Newton Council.

#### **ADJOURNMENT**

At 11:15 a.m., the Board returned to regular session and there being no further business, the Board adjourned.



**Robert E. Hibbitts, Chair**



**Virginia W. Sobotkin, Clerk**